IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.8.2020

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

TAX CASE APPEAL NO.213 OF 2009
(heard through video conferencing)

Shri Kamal Basha ...Appellant

Vs.

The Deputy Commissioner of
Income Tax, Business Circle VIII,
611, Anna Salai, Chennai-6. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961, against the order dated 26.9.2008 passed by the Income Tax Appellate Tribunal Chennai 'B' Bench, Chennai in I.T.A.No.1875/Mds/ 2007 for the assessment year 2003-2004, against the order dated 07.03.2007 made in ITA.No.306/06-07 on the file of the commissioner of Income Tax(Appeals)-IX, Chennai-34, for the Assessment year 2003-04, & as against the order dated 28-09-2006 DCIT/BCVIII/AAIPK5393G/06-07, on the file of the Deputy Commissioner of Income Tax, Business Circle VIII, Chennai-6, for the Assessment year 2003-04.

For Appellant : Mr.A.S.Sriraman

For Respondent : Mrs.V.Pushpa, SC

Judgment was delivered by T.S.SIVAGNANAM,J

We have heard Mr.A.S.Sriraman, learned counsel appearing for the appellant - assessee and Mrs.V.Pushpa, learned Standing Counsel appearing for the respondent - Revenue.

2. This appeal by the Revenue under Section 260A of the Income Tax Act, 1951 (for short, the Act) is directed against the order dated 26.9.2008 passed by the Income Tax Appellate

Tribunal, Chennai 'B' Bench (for brevity, the Tribunal) in I.T.A.No.1875/Mds/2007 for the assessment year 2003-2004.

3. The appeal has been admitted on 14.7.2009 on the following substantial question of law :

"?Whether the Appellate Tribunal is correct in law in sustaining the levy of penalty under Section 271(1)(c) of the Act on the rejection of claim of sundry creditors which were offered for taxation in the course of the assessment proceedings by the Appellant even though the presumption on the concealment of Income or furnishing of inaccurate particulars of Income as per explanation 1 was rebutted in the proceedings?"

4. It is pertinent to note that by judgment dated 26.6.2019, we allowed this appeal filed by the assessee. Subsequently, it was brought to the notice of this Court by the learned Standing Counsel appearing for the Revenue that the assessee had filed another appeal in TCA.No. 155 of 2009 against the very same impugned order and it was dismissed even at the admission stage by judgment dated 20.4.2009.

5. When the matter was listed earlier, the learned counsel for the appellant - assessee submitted that he would like to get instructions and make submissions to distinguish both the cases. Therefore, we adjourned the matter. Today, the matter is listed for hearing.

6. It is submitted by the learned counsel appearing for the appellant - assessee that the case in TCA.No.155 of 2009 arose out of an order in a cross objection filed by the assessee, that the dismissal of TCA.No.155 of 2009 by judgment dated 20.4.2009 can have no impact on the present appeal and that the judgment in TCA.No.213 of 2009 dated 26.6.2019 should be allowed to continue and the prayer for recalling the said judgment dated 26.6.2019 made by the Revenue should be rejected.

7. To test the correctness of the said submission made by the learned counsel for the assessee, we have perused the judgment in TCA.No.155 of 2009 dated 20.4.2009. The said appeal was filed raising three substantial questions of law, which are as hereunder :

"i. Whether, the Appellate Tribunal is correct in law in sustaining the levy of penalty under Section 271(1)(c) of the Act on the rejection of claim of sundry creditors which were offered for taxation in the course of the assessment proceedings by the appellant even though the presumption on the concealment of income or furnishing of inaccurate particulars of income as

per Explanation 1 was rebutted in the proceedings?
ii. Whether the Appellate Tribunal is correct in law in sustaining the action of the respondent in imposing penalty under Section 271(1)(c) of the Act even though the application of the deeming provisions in Section 41(1) of the Act would not come within the ambit of the said penal provisions especially the explanation offered was bona fide and not rejected as malafide ? And
iii. Whether the Appellate Tribunal is correct in law in dismissing the cross objection as infructuous even though the cross objection as per the legal prescription should be construed as a separate proceedings requiring independent consideration and recording of findings on the issues emanating and urged by the cross objector/appellant herein?”

8. The Hon'ble Division Bench of this Court, after considering the case of the assessee, dismissed TCA.No.155 of 2009 by judgment dated 20.4.2009, the operative portions of which, read as follows :
“Recently, the Apex Court has considered Section 271(1)(c) of the Act on a reference made wherein the ratio laid down in Dhilip N.Shroff Vs. Joint CIT [reported in 291 ITR 519] was doubted. The three Judges Bench of the Apex Court in the case of Union of India Vs. Dharmendra Textile Processors [306 ITR 277] has clearly enunciated that in order to invoke Section 271(1)(c) of the Income Tax Act, the existence of dishonest intention and deliberate failure to give correct particulars is not necessary. The Supreme Court has held that the Explanation appended to Section 271(1)(c) of the Income Tax Act, 1961 indicate the element of strict liability on the assessee for concealment or for giving inaccurate particulars while filing the return. The object behind the enactment of Section 271(1)(c) read with the Explanations indicates that the Section has been enacted to provide for a remedy for loss of revenue. The penalty under that provision is a civil liability. Wilful concealment is not an essential ingredient for attracting civil liability as is the case in the matter of prosecution under Section 276C of the Income Tax Act and held that any concealment come within the purview of Section 271(1)(c) would automatically render the assessee for penalty under Section 271(1)(c) of the Act.
7. On the facts, we have concluded that the assessee's attitude before the officer is inconsistent and even the inconsistent stand could not be established with the supportive evidence or materials. In the light of the decision of the Apex Court in the case of Union of India Vs. Dharmendra Textiles Processors [306 ITR 277], we are of the view that penalty under Section 271(1)(c) of the Act is attracted in this case.

8. We do not find any merit in this appeal for determining any question of law. The appeal is dismissed.”

9. In fact, the substantial question of law, which was entertained in this appeal is the first substantial question of law in TCA.No.155 of 2009 and it is a verbatim repetition. Since the Hon'ble Division Bench considered the entire matter and dismissed the appeal holding that no substantial question of law arose for consideration, we are not inclined to accept the submissions made by the learned counsel for the appellant – assessee. In fact, the learned counsel, who appeared in both the matters, is the same person and it is not clear as to why it was not brought to our notice by the learned counsel, when we heard TCA.No.213 of 2009. Be that as it may, in the light of the above discussions, the judgment in TCA.No.213 of 2009 dated 26.6.2019 has to be recalled.

10. Accordingly, the judgment in TCA.No.213 of 2009 dated 26.6.2019 is recalled. Consequently, TCA.No.213 of 2009 is dismissed as unnecessary. No costs.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

RS

To

1.The Income Tax Appellate Tribunal,
Chennai ‘B’ Bench.

2.The Commissioner of Income Tax(Appeals)-IX,
Chennai-34.

3.The Deputy Commissioner of Income Tax,
Business Circle VIII,
Chennai-6.

TCA.No.213 of 2009

LN(CO)

CB(09/10/2020)